

Series I
Correspondence,
1932-1973

Box 7, Folder 18

July 10, 1963 -
October 30, 1963

NAVAL WAR COLLEGE
NEWPORT, R. I.

JUL 10 1963

Dear Rafe:

Thank you for your letter of 25 June 1963 in regard to the 1963 Global Strategy Discussions. I read your remarks with interest and appreciate the submission of your observations and recommendations.

As you are well aware, we are constantly striving for improvement in the Global Strategy Discussions and, in this regard, I have discussed your letter with my staff and have taken the liberty of making it available to them for the consideration of your suggestions in planning the 1964 Discussions. You may be assured that your constructive comments shall receive every attention.

Rafe, I should also like to take this opportunity to thank you for your participation in the Global Strategy Discussions. Once again the comments which I have heard have indicated that your participation contributed materially to the successful accomplishment of the purpose of the Global Strategy Discussions.

Your continuing interest in the War College is greatly appreciated.

Sincerely,



B. L. AUSTIN

*Rear Admiral R. W. Bates, U. S. Navy (Ret.)
12 Mount Vernon Street
Newport, Rhode Island*

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United States Senate

COMMITTEE ON
LABOR AND PUBLIC WELFARE

July 12th, 1963

Rear Admiral R. W. Bates, USN (Ret.)
12 Mount Vernon Street
Newport, Rhode Island

Dear Admiral Bates:

Senator Pell has received a reply to his recent communication to Senator Richard B. Russell concerning the possibility of legislation authorizing you to receive retired pay of a rear admiral of the upper half.

Enclosed is a self-explanatory copy of this communication from Harry L. Wingate, Jr., Chief Clerk of the Senate Committee on Armed Services.

I know you will be disappointed with this report, as is Senator Pell, and he is very sorry that this news could not have been more favorable. However, after extensive conversations with members of the staff of this Committee, I believe very little can be done to be of assistance in regard to legislation. But, if you believe Senator Pell can be of any further help, please let him know.

Sincerely,



Ray Nelson
Administrative Assistant
to Senator Claiborne Pell

Enclosure (1)

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HARRY L. WINGATE, JR., CHIEF CLERK

United States Senate

COMMITTEE ON ARMED SERVICES

July 8, 1963

Honorable Claiborne Pell
United States Senate
Washington, D. C.

Dear Senator Pell:

Senator Russell has asked that I reply to your letter regarding the possibility of legislation authorizing Rear Admiral Richard W. Bates, USN (Retired) to receive retired pay of a rear admiral of the upper half.

You indicate that Admiral Bates served on active duty as a commodore for some nine years and received the pay of a rear admiral of the lower half. Admiral Bates apparently could not serve on active duty as a rear admiral because of the lack of vacancies for that rank.

There is at the present time no legislation before the Committee on Armed Services which would provide that those who served in the grade of commodore would receive pay of a rear admiral of the upper half. It would be my personal opinion that the chances of enactment of such legislation would not be favorable since it would involve the precedent of authorizing, on a retroactive basis, retired pay in a pay grade in which the officer never served.

In view of the tremendous contribution of Admiral Bates to Naval history during his work at the Naval War College, I would like to be able to make a more favorable response.

I hope this information will be useful.

Sincerely yours,

Harry L. Wingate, Jr.
Chief Clerk

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COMMANDER CRUISER-DESTROYER FORCE
UNITED STATES ATLANTIC FLEET

25 July 1963

Dear Rafe:

This letter will advise you and the members of The Clambake Club of my detachment as Commander Cruiser-Destroyer Force, U.S. Atlantic Fleet, on 3 August 1963, and the situation which has permitted me to have the privileges of the Club.

Mrs. Speck and I have greatly appreciated and enjoyed the privilege of utilizing the facilities at The Clambake Club and, particularly, the opportunity to meet the members. The Clambake Club is certainly a pleasant and delightful place to go, and the food has been uniformly remarkably delicious.

I hope you will continue to give favorable consideration to extending the privileges of The Clambake Club to the flag officers that will be ordered as COMCRUDESANT.

Finally, I would like to thank you for the many courtesies you have extended to me, and please accept my best wishes for your continued success as the President of The Clambake Club of Newport.

Sincerely,

R.H. SPECK

Rear Admiral, U.S. Navy

Rear Admiral R.W. Bates, USN(Ret)
The Clambake Club
Easton's Point
Newport, Rhode Island

Next duty station: Chief, Military Assistance Advisory Group (Netherlands)

Mailing address: Chief, Military Assistance Advisory Group
APO 292
New York, New York

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JOHN S. FORSYTHE, GENERAL COUNSEL

United States Senate

COMMITTEE ON
LABOR AND PUBLIC WELFARE

July 31, 1963

Rear Admiral R. W. Bates, USN (Ret.)
12 Mount Vernon Street
Newport, Rhode Island

Dear Batesy:

Just a line to say how sorry I am that the news from the Armed Services Committee concerning the possibility of legislation authorizing you to receive retired pay of a rear admiral of the upper half was not favorable.

I am not one to give up easily, but it seems to me the chances of getting through the legislation we seek are virtually nil. Accordingly, if you intend to take this matter up through the Court of Claims, I would say "green light." Even there, though, I am personally not sanguine of your chances of success.

I wish I could write you a more cheery letter.

See you very soon.

Ever sincerely,



Claiborne Pell

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21, Aug 1963

Dear Adm. BATES:

It has been my pleasure, during the past few months, to receive from our countries outstanding military leaders, letters of historic value. These letters have conveyed to me in their own words, the valor, deeds, courage and conduct of the men and the battles in which these men fought. These events all within their own command that help eventually, to lead to the ultimate Allied victory.

Certainly so, some where, within that distant past, memories of this past war, there is one such occurrence that comes to your mind. It is this occurrence that I should like to hear about.

May I extend to you my most grateful thanks for your most valuable time and your kind attention. I hope I may hear from you in the near future.

Address: 683 Conestoga Rd.
VILLANOVA
Penna 19085

Very Truly Yours
Richard H. Stetson



THE ASSISTANT
CHIEF OF NAVAL PERSONNEL
WASHINGTON 25, D. C.
6 September 1963

Dear Rafe:

Thank you for your two nice letters, and I apologize for this late reply. However, the questions you posed were not only especially interesting, but also of great importance to you; and I asked the planners to give me a brief on which to base a reply. They are still working on this, and my advance information is that they are entirely sympathetic, but not too optimistic about what can be done. I will write you a follow-up in this regard.

I enjoyed very much your various comments on world affairs and, as in the past, I find myself generally in agreement with you. It was interesting to hear that you had seen Walter Innis, and I thank you for the information that he is working in Washington. I will try to contact him here.

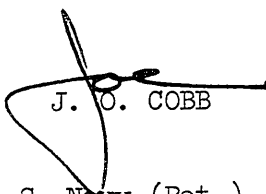
Thank you for the invitation to look you up should I get up to Newport again, which I hope to do one of these days. As you may know, the Mrs. Cobb you knew, Enid, died in Naples in 1954. I was remarried the following year, and we since have increased our inventory of youngsters from three to five.

Thanks again for your nice letter. I hope to forward some up-to-date information on your inquiry shortly.

Very best regards.

*Please, let me know if
you come to town.*

Sincerely,


J. O. COBB

Rear Admiral R. W. Bates, U. S. Navy (Ret.)
12 Mt. Vernon Street
Newport, Rhode Island

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In the United States Court of Claims

No. 137-56

(Decided January 16, 1957)

JOSEPH W. McCOLL, JR. v. THE UNITED STATES

Mr. John D. Murphy for the plaintiff.

Mr. Francis J. Robinson, with whom was *Mr. Assistant Attorney General George Cochran Doub*, for the defendant.

ON DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S PETITION, AND
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

MADDEN, *Judge*, delivered the opinion of the court:

The plaintiff is a rear admiral on the retired list of the United States Navy. He is receiving retired pay based upon the status of a rear admiral of the lower half. He claims, and here sues for, retired pay based upon the status of a rear admiral of the upper half.

The plaintiff enrolled in the United States Naval Reserve Force in April 1917, and entered on active duty in that same month. He was commissioned as an ensign in 1918, and served continuously on active duty as a commissioned officer until April 1, 1945. On that date, his permanent rank was that of commander, and his temporary rank was that of captain. On that date he was retired for physical disability as a temporary captain, and on the same day was advanced to rear admiral of the lower half on the retired list, pursuant to section 404 (1) of the act of June 23, 1938, 52 Stat. 949, as amended, 34 U. S. C. (1946 ed.) 404 (1). That section says:

All line officers of the Navy who have been specially commended for their performance of duty in actual combat by the head of the executive department under whose

jurisdiction such duty was performed, when retired, except as provided in section 404 (h) of this title, shall, upon retirement, be placed upon the retired list with the rank of the next higher grade and with three-fourths of the active-duty pay of the grade in which serving at the time of retirement.

On the same date, April 1, 1945, the plaintiff was recalled to active duty in his retired rank of rear admiral of the lower half. When he had served on active duty in that rank for two years, i. e., on April 1, 1947, he began to receive the pay and allowances of a rear admiral of the upper half. The Government says that he should not have received the increased pay and allowances, and did receive them only because of an administrative error.

The plaintiff was released from active duty on May 23, 1947. For a time thereafter he received the retired pay of a rear admiral, upper half, but by the Comptroller General's decision B-68965, of January 21, 1948, it was held that the plaintiff was entitled only to the active duty pay and the retired pay of a captain, for the whole period beginning April 1, 1945, and the asserted overpayment was checked against his current retired pay. This conclusion was reconsidered and in 1955 it was decided that he was entitled to the active duty pay, and the retired pay, respectively, of a rear admiral, lower half, from April 1, 1945, down to date, and he has now been so paid.

As we said at the beginning of this opinion, the plaintiff claims that he should have received the active duty pay of a rear admiral, upper half, for the period April 1, 1947, to May 23, 1947, and the retired pay of the same rank thereafter. He bases his claim upon the act of April 8, 1946, 60 Stat. 86, 34 U. S. C. 428, which says:

Any officer of the retired list of the Navy of the permanent grade or rank of rear admiral who is entitled to the pay of the lower half of that grade and who is, has been, or may be recalled to active duty and who in time of war or other national emergency served, serves, or may serve satisfactorily on active duty for a period of two years or more in the grade or rank of rear admiral or in a higher grade, shall be entitled when on active duty to the pay and allowances of a rear admiral of the upper half unless he is entitled under other provisions of law to higher pay and allowances, and he shall be

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entitled when on inactive duty to retired pay equal to 75 percentum of the pay of a rear admiral of the upper half unless he is entitled under other provisions of law to higher retired pay or allowances: *Provided*, That no back pay or allowances shall be held to have accrued under this section prior to April 8, 1946.

The plaintiff says that, since he was, on April 1, 1945, appointed a rear admiral of the lower half on the retired list and was on that date recalled to active duty in that rank and served satisfactorily for two years, i. e., until April 1, 1947, he met the conditions of the statute and on the latter date became entitled to the pay and allowances of a rear admiral of the upper half until his release from active duty on May 23, 1947, and to the retired pay of that rank thereafter.

The 1946 act applies to officers of the *permanent* rank or grade of rear admiral. The Government says that the advancement in rank to rear admiral of the lower half on the retired list on April 1, 1945, did not confer upon the plaintiff the permanent rank of rear admiral of the lower half. We do not understand why it did not. The advancement was given him pursuant to the 1938 act, already quoted in this opinion, because he had been specially commended for performance of duty in actual combat. To be sure, he had not earned the advancement by service for the number of years that it probably would or might have taken for him to obtain the advancement without the commendation. But if Congress chose to make the commendation the equivalent, for advancement purposes, of years of service or other normal requirements, it could do so, and it did so. It said nothing in the 1938 act to indicate that there was to be anything temporary about an advancement in rank on the retired list given because of a commendation.

The Government urges that the 1946 act was intended to apply only to officers who had served in the rank of rear admiral prior to retirement, and who, after retirement, were recalled to active duty and served two years. It says that the act was not intended to benefit officers such as the plaintiff who attained the rank only on retirement, and by reason of the application of a statute such as the 1938 act relating to commendation. It says that the legislative history supports

this construction of the statute. We think, however, that the extensive legislative history cited and quoted by the plaintiff shows that a considerable number of the admirals who were intended to be benefited by the statute were admirals who had received that rank on retirement because of commendation, and who had never served actively in that rank prior to their recall. This must have been known to the officers of the Department of the Navy who drafted the statute and who testified before the congressional committees. We do not find in the legislative history any dependable evidence that the statutes were not to be read according to the ordinary meaning of the words.

The Government urges that in any event the plaintiff may not recover such installments of pay and retired pay as became due more than six years prior to the filing of his suit. As to this point, we agree with the Government.

The defendant's motion to dismiss the plaintiff's petition is denied. The plaintiff's motion for a summary judgment is granted. Plaintiff is entitled to recover and judgment will be entered to that effect. The amount of the judgment will be determined in further proceedings pursuant to Rule 38 (c).

It is so ordered.

LARAMORE, *Judge*; WHITAKER, *Judge*; LITTLETON, *Judge*; and JONES, *Chief Judge*, concur.

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THE ASSISTANT
CHIEF OF NAVAL PERSONNEL
WASHINGTON 25, D.C.

18 September 1963

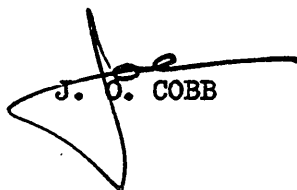
Dear Rafe:

I have been holding your letter, expecting we might receive some indication that you had stimulated the interest of a Congressman in your case in connection with the pending pay bill. You indicated near success in this approach at the time of the 1958 pay raise. The new pay bill has now progressed to a point, however, where it seems highly unlikely that your case will be raised in connection with that legislation.

In any event, I do want to at least notify you that I have alerted our legislation people in the Bureau. If they are called upon by your Congressman to comment on any proposed legislation directed toward your problem, it will receive the friendly hearing you have requested.

Very best regards.

Sincerely,


J. O. COBB

RADM R. W. BATES, USN(Ret)
12 Mount Vernon Street
Newport, Rhode Island

1143

4 October 1963

Dear Admiral Bates:

I just wanted to write you and let you know that Bob Gillis and I enjoyed our brief visit with you at your Clambake Club. I must admit we were as impressed with the cottage as the Club house itself. Certainly a beautiful spot...even in rough weather... and the folks there, all hands, were simply great. In fact, I thought I had been there before.

We hope you got some satisfaction from the "blaw" of the pipes. Unfortunately, we both banged our bass drones on the door jam as we entered and the result was that our pipes were a wee bit out of tune...not quite as "sweet" as I would have liked it.

By the way, for some stimulating Highland Pageantry, you should know that the famous Black Watch, The Royal Highland Regiment Band and Massed Pipers will do their stuff at the R.I. Auditorium on the evening of November 11. It's a great show and it's highly recommended.

Once again, thanks for the opportunity of being able to serve you and the fine people of your Clambake Club.

Sincerely,

Paul B. Howland

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JOHN S. FORSYTHE, GENERAL COUNSEL

United States Senate

COMMITTEE ON
LABOR AND PUBLIC WELFARE

October 23rd, 1963

Rear Admiral R. W. Bates, USN (Ret.)
12 Mount Vernon Street
Newport, Rhode Island

Dear Batesy:

I have received a reply to my inquiry on your behalf from the Department of the Navy concerning the possibility of special legislation which would be of assistance to you.

Enclosed is a self-explanatory copy of this communication from Vice Admiral W. R. Smedberg, III, Chief of Naval Personnel.

I believe this report will prove informative to you. However, I extremely regret the adverse nature of this communication. But, I think that now at last the Navy has clearly outlined its official position. As you can readily see, even though personnel in the Defense Department are sympathetic to you and your situation, when it comes to an official position it would appear that they are dead set against any special legislation which would be helpful to you.

Therefore, although I should like to help you and, in fact, if I had received any encouragement at all or glimmer of hope from the Navy Department, I can assure you that I would have gone ahead and introduced a private bill on your behalf.

However, in light of this official naval report combined with the knowledge of the present unfavorable climate of opinion of the Armed Services Committees in both the House and the Senate, it is

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Rear Admiral R. W. Bates, USN (Ret.)
Page 2
October 23rd, 1963

my thought that the only avenue left open to you is possibly through the Court of Claims, as you indicated in your previous correspondence with me.

In any event, if you have any further thoughts on this matter, please let me know.

Warm regards.

Sincerely,



Claiborne Pell

Enclosure

1146



DEPARTMENT OF THE NAVY
BUREAU OF NAVAL PERSONNEL
WASHINGTON 25, D.C.

IN REPLY REFER TO
Pers-A22b-1F

18 OCT 1963

Dear Senator Pell:

I apologize for the delay in answering your letter of October 1, 1963, concerning Rear Admiral Richard W. Bates, United States Navy (Retired).

My staff has given careful and sympathetic consideration to Rear Admiral Bates' case. It is understandable that he feels discriminated against with respect to his retired pay. As you know, he served on active duty after retirement for many years in the grade of commodore, receiving the same active-duty pay as a rear admiral (lower half), and his retired pay is based on that pay grade, whereas retired officers who served on active duty as rear admirals (lower half) for two years were advanced to the upper half at that point and on re-retirement received retired pay based on the pay of rear admiral (upper half) pursuant to a law enacted in 1946.

The 1946 law was enacted primarily for the benefit of Rear Admiral Richard E. Byrd but has benefited a very small number of other retired officers also. The distinction between these officers and Rear Admiral Bates is that they served on active duty after retirement as rear admirals (first in the lower half and then in the upper half), whereas he served as a commodore. We realize that the circumstances that caused him to be recalled as a commodore were beyond his control, but this does not alter the facts.

Notwithstanding our sympathetic understanding of Rear Admiral Bates' position, the Department of the Navy cannot sponsor legislation to provide that his retired pay be based on the pay of a rear admiral (upper half). However phrased, this would be in the nature of private relief legislation for one individual. While it would equalize his retired pay with that of the beneficiaries of the Byrd law, it would be discriminatory against brigadier generals of the Marine Corps, Army, and Air Force who serve on active duty after retirement. There is no provision for their automatic advancement to the grade of major general on the retired list after any amount of such service, and I feel sure that any proposed legislation to provide automatic advancement of this kind would be opposed by all of the military departments and the office of the Secretary of Defense.

Further, as you may know, there is an unfavorable climate of opinion, both in the Department of Defense and in the Committees on Armed Services of the House and Senate, against permitting any officer to have his retired pay based on the pay of a grade in which he never served on active duty. Also, the law under which officers of the Navy and Marine Corps having combat citations were advanced one grade upon retirement, but without increase in retired pay, was repealed in 1959 because the Congress considered it to be discriminatory against the Army and Air Force.

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Accordingly, the Department of the Navy is not in a position to sponsor, for one naval officer, legislation which would discriminate against officers of the equivalent grade in the other armed forces.

I understand and concur in your admiration of Rear Admiral Bates and his splendid contribution to naval history. I regret that I cannot give you a more favorable reply to your letter.

Sincerely yours,

W. R. SMEDBERG, III
Vice Admiral, USN
Chief of Naval Personnel

Honorable Claiborne Pell
United States Senate
Washington 25, D.C.



THE ASSISTANT
CHIEF OF NAVAL PERSONNEL
WASHINGTON 25, D.C.

30 October 1963

Dear Rafe:

Admiral Smedberg wrote Senator Pell on 18 October regarding your desire for legislation to provide retirement pay based on the grade of Rear Admiral (upper half).

Senator Pell has no doubt contacted you by now explaining the stand taken by Admiral Smedberg. Basically, he stated that the Department of the Navy is not in a position to sponsor legislation as you requested, since this would be supporting private relief legislation for one individual and would be discriminatory against brigadier generals of the other services who serve on active duty after retirement.

Sorry I cannot be the bearer of good news but I know you must understand the position Admiral Smedberg is obliged to take.

Best regards.

Sincerely,

J. O. COBB

RADM R. W. BATES, USN(Ret)
12 Mount Vernon Street
Newport, Rhode Island

*In addition
to the friends
you mentioned
we have
lost Admirals
Kirk and Stoddard
recently. (This
is indeed a
depressing commentary
and I will try for
a more cheerful
note later.)*
Joe

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BROWN UNIVERSITY
Bicentennial 1764-1964

PROVIDENCE 12, RHODE ISLAND

October 30, 1963.

Admiral Richard W. Bates,
Newport, R.I.

Dear Admiral,

I have just returned from an airplane trip off the continent, to Nantucket. We got back just ahead of Ginny, thank goodness! What a girl she turned out to be, backing up and turning corners and generally confusing the U.S. Weather Bureau. Thank heavens she elected to go to sea, rather than to come up Narragansett Bay.

I am sorry to report that the week you picked for a possible talk by me to the Quindecim Club is the one in which I am scheduled to fly out to California to attend a day and half of meetings of AIRBORNE ECLIPSE OBSERVERS. Since the group will be discussing plans to observe the eclipse of May 30, 1965, which touches no land as it crosses the South Pacific, I am anxious to be present, so that I might be invited to fly with the National Geographic or the Air Force. I tell my friends that we may have to fly out of Tahiti and return there after the flight. A number of them have expressed sympathy for me, and have offered to take my place.

Before April 12, I have only the weeks of ~~January 20~~, February 10, 17 and 24 available. No, I am sorry; I'll have to cross out the first of those since it comes between semesters and I may be going down to Peru then. Please keep me on your list of people holding "rain checks".

Sincerely,

Smiley
Charles H. Smiley

University Hall, 1770, A National Landmark



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